IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3022 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHBHAI BHURAJIBHAI TANK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3022 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order dated 19.2.2004, by

which he is detained as a "bootlegger", under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about four criminal cases, which are registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in illicit liquor. The authority, after having been satisfied about the alleged illegal activities of the petitioner, and after reaching the subjective satisfaction, has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. Learned advocate for the petitioner submitted that, the authority has not recorded the statements of any witnesses, and on the sole basis of the aforesaid cases registered against the petitioner under the Prohibition Act, the authority has passed the detention order. It is submitted that, from the aforesaid criminal cases, it cannot be said that the activity of the petitioner is such which is injurious to public health or that he has violated any public order by committing offence under the Bombay Prohibition Act.

4. To substantiate his say that the activities of the petitioner may violate law and order and not the public order, the learned advocate for the petitioner has relied upon the Division Bench judgment of this Court rendered in L.P.A. No.223/2000, wherein in para 5, it is held that such cases, at the most, attract law and order and not the public order, which reads as under :

> "5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala v. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the

appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The

> mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants."

5. So far as the aforesaid contentions are concerned, no affidavit-in-reply is filed by the authority controverting the said contention. In such type of cases, normally, reply is required to be filed, controverting the averments made in the petition; otherwise, it would be presumed that the averments made in the petition are correct because they stand uncontroverted. In view of the said aspect also, the averments made in the petition are required to be accepted. Since the averments are not controverted and in view of the Division Bench judgment of this Court, the petition is required to be allowed on the ground that the breach of public order is not established especially when

such cases can be taken care of by ordinary law.

6. For the foregoing reasons, this petition is allowed. The order of detention dated 19.2.2004 is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in connection with any other case.

7. At this stage, learned advocate for the petitioner has voluntarily made a statement that the petitioner will not enter into Olpad Town upto 30th November, 2004, unless he is required to appear in any other case for attending the court. Learned advocate for the petitioner has further submitted that he is making the statement after taking instructions from the detenu. The Concerned Police Officer may also monitor this aspect so that the statement of the petitioner can be effectively taken care of by the authorities. Rule is made absolute.

(P.B. Majmudar, J.)

syed/